UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

FEDERATION OF AGENTS AND INTERNATIONAL REPRESENTATIVES,

Petitioner,

NLRB Case No. 05-RC-078154

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Employer.

EMPLOYER'S EXCEPTIONS TO THE REGIONAL DIRECTOR'S REPORT ON OBJECTIONS

Pursuant to 29 C.F.R. §102.69(c), Employer International Brotherhood of Teamsters, by its undersigned counsel, submits the following Exceptions to the Report on Objections issued by the Regional Director on June 21, 2012.

EXCEPTION 1: DISENFRANCHISED VOTERS: The Regional Director refused to consider and count ballots which were mailed a week before the closing date but which were received by the Regional Office after the ballot count. This disenfranchised 15% of the eligible voters in an election decided by two votes, with one challenged ballot.

EXCEPTION 2: RESPONSIBILITY FOR THE LATE DELIVERY OF BALLOTS: The Regional Director's Report on Objection does not mention that the Board has contracted with a third party to transport mail ballots from the Washington, D.C. Post Office to the Resident Office and attributes the failure of 15% of ballots cast by eligible voters to be delivered in time to be counted to the "vagaries of the US Mail."

EXCEPTION 3: THE BALLOT OF RICHARD FORD: The Regional Director's Report on

Objections erroneously and arbitrarily required the Employer to voice two challenges to the single

ballot of Richard Ford. After the Employer's observer initially challenged the ballot because the

envelope in which it was mailed appeared to have been opened and taped shut, the Board Agent took

the ballot envelope to the Resident Officer, who (in secret and without consulting the parties)

proclaimed the ballot valid and directed the Board Agent to count the ballot. The Regional Director

added insult to injury when he berated the Employer's observer for not voicing a second challenge

to the ballot following the Resident Office's arbitrary actions.

EXCEPTION 4: THE BALLOT OF RICHARD FORD: The Regional Director's Report on

Objections erroneously upheld Resident Officer's arbitrary decision to count Richard Ford's ballot

despite an obvious tear in the envelop right across Mr. Ford's signature. The condition of the ballot

envelop clearly raises the possibility that the ballot was altered or tampered with.

In support of these Exceptions, the Employer submits the attached Memorandum and

supporting evidence.

Respectfully submitted,

Jonathan G. Axelrod

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BROTHERHOOD OF TEAMSTERS

July 5, 2012

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

FEDERATION OF AGENTS AND INTERNATIONAL REPRESENTATIVES,

Petitioner,

NLRB Case No. 05-RC-078154

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Employer.

MEMORANDUM IN SUPPORT OF EMPLOYER'S EXCEPTIONS TO THE REGIONAL DIRECTOR'S REPORT ON OBJECTIONS

Pursuant to 29 C.F.R. §102.69(c), Employer International Brotherhood of Teamsters, by its undersigned counsel, submits the following Memorandum in Support of its Exceptions to the Report on Objections issued by the Regional Director on June 21, 2012.

This election was narrowly decided by a two vote margin. Nevertheless, fully 15 % of the eligible voters who cast ballots that were received by the Region were disenfranchised because their ballots were not retrieved from the Washington, D.C. Post Office in time to be counted. This is hardly analogous to situations in which ballots may have been "lost" due to the "vagaries of the US mail" or in which eligible voters who did not receive ballot kits failed to ask for replacements despite having been informed of their right to do so. The parties consented to a mail ballot election with the understanding that eligible voters would have a reasonable opportunity to cast their ballots. Because of actions of either the Postal Service or a contractor employed by the Region to transport mail from

the Washington, D.C. Post Office to the Region, a more than determinative number of voters were arbitrarily disenfranchised. We are aware of no precedent supporting such a monstrous outcome.

Furthermore, and to add insult to injury, the Regional Director took the additional step here of castigating the Employer for failing to voice two challenges to a single ballot, which the Resident Officer had ruled valid *ex parte* (outside the presence of the parties). This despite obvious and undeniable evidence that it had been opened and resealed prior to being received by the Region.

FACTS¹

Pursuant to a Stipulated Election Agreement, on May 14, 2012, the NLRB mailed ballots to 40 employees with the understanding that the ballots would be counted at the Region 5 Resident Office at 3:30 p.m. on May 29. On May 29, 2012, the Region counted the ballots. Of the 34 valid votes received, 18 employees cast votes in favor of representation by FAIR, 16 cast votes against representation by FAIR, and there was one challenged ballot. The Region challenged one additional ballot cast by a person not on the Excelsior List, but FAIR consented to the challenge and the ballot was disregarded.

During the ballot count, but prior to its conclusion, the Employer advised the Board Agent that a number of employees whose ballots did not appear to have been received by the Region had reported to the Employer that they had sent ballots via priority mail and had tracked them to the Washington, D.C. Post Office with more than sufficient time to have been transported to the Resident Office in time for the ballot count. The Board Agent proceeded with the count nonetheless. Indeed, the evidence shows that no fewer than seven voters had sent their ballots by priority mail by

¹Attached to this Memorandum are the affidavits and exhibits submitted to the Region in support of the Exceptions.

at least May 22, 2012, and had obtained confirmation of their delivery to the Washington, D.C. Post Office well in advance of the ballot count on May 29, 2012. Three of these voters clearly placed the Region on notice of the startling and unexplained delay in transporting ballots from the Post Office to the Region when, after determining that their ballots had not been received at the Resident Office, they traveled to Washington to cast ballots in person. In fact, one became the Employer's observer after he traveled to Washington to vote. He informed the Board Agent during the count that he had traveled to Washington to ensure his right to vote. Four others were unable to make the trip, but it is undisputed that their ballots were not lost and three were ultimately delivered to the Resident Office after the count.

At least seven employees were sufficiently concerned about mail delays that they sent their ballots by "priority" mail, which the Post Office promotes as producing three day delivery.

The Regional Director found as follows [Report at 2-3]:

According to the affidavits and tracking printouts, the four employees (Employees A, C, D, and E) whose ballots were not received at the time of the count (and who did not cast ballots in person) mailed their ballots between May 18 and 22 via priority mail from locations throughout the United States. The Resident Office did not receive any of these ballots prior to the count on May 29. Two were received on May 31, one was received on June 8, and one was never delivered.

With respect to the three employees (Employees B, F, and G) who flew to Washington to vote in person and whose votes were counted in the tally, they sent their ballots via priority mail between May 21 and 23. The Resident Office received these ballots on May 31, June 4, and June 8.

Three additional ballots were returned to the Resident Office after the tally of ballots that were not mentioned in the Employer's objection. Two ballots of eligible voters were received on June 4 and June 5. The date these ballots were mailed is unknown. The third ballot was cast by an individual who did not appear on the Excelsior list, and it was received on May 30.

Thus, it is undisputed that nine of the 40 eligible voters (22.5%) submitted ballots that were mailed well before the deadline but were not received on time. It is undisputed that three of those

employees flew to Washington, D.C. to vote in person when they used their priority tracking numbers to learn that their ballots had not been received. BUT six voters (15% of the bargaining unit) who relied upon the U.S. mail were disenfranchised because they could not, or did not, fly to Washington to vote in person. Their votes could have been dispositive given the narrow differential in the votes actually counted and the one challenged ballot.

Furthermore, the Employer provided undisputed evidence that the ballots were not lost somewhere between the Post Office in which they were mailed and Washington, D.C. Rather, each of the four ballots was timely delivered to Washington, D.C., where they sat unclaimed by a Board contractor and undelivered to the Resident Office.

EXCEPTION 1: DISENFRANCHISED VOTERS: The Regional Director refused to consider and count ballots which were mailed a week before the closing date but which were received by the Regional Office after the ballot count. This disenfranchised 15% of the eligible voters in an election decided by two votes, with one challenged ballot.

The parties agreed to a mail ballot because the eligible employees are scattered across the United States where they are employed on organizing campaigns conducted by the International Union, their employer. The parties agreed to a mail ballot because there was no single location at which they could vote, because the NLRB cannot conduct walk-in voting at multiple sites across the country, and because it would be unreasonable either to require the Employer to fly the employees to a single location to vote or to force the employees to travel to Washington on their own to vote.

As union organizers, the bargaining unit employees understand the importance of voter turnout, that every vote counts. Thus, at least seven sent their ballots by priority mail, which the Post Office promised to deliver well before the vote count. The Regional Director found that they mailed their ballots between May 18 and May 22, at least a week before the ballot count and by priority mail

which certainly should have produced a timely response.

The NLRB's representation procedures are designed to permit employees to vote on whether or not they desire to be represented by a union. When employees are given the opportunity to vote by mail, they should not be denied the right to vote because of proven errors by the Postal Service or the interface between the Board and the Postal Service. Nor should they be compelled to fly across the country to vote in person because of errors well beyond their control. Nor should those who could not fly to Washington to vote in person be penalized for that choice.

There is no precedent addressing the precise situation we have encountered here: more than 20% of the eligible voters who cast ballots that were ultimately delivered to the Local end up being disenfranchised because the ballots were not transported to the Region in time to be counted. This is far different than where ballots are simply "lost." Indeed, if anything, these circumstances are more compelling than where ballots were simply deposited in the mail with sufficient time to have made it to the Region. Here, they were deposited in the mail and received in Washington with more than ample time to have been transported to the Region in time for the count. The Region arbitrarily refused to consider them, and can cite to no Rule or precedent that supports this action. And, as a matter of policy, the Region should have erred on the side of counting rather than arbitrarily discarding the ballots, particularly when as here the tardy delivery was not attributable to the voters who ended up being disenfranchised.

The Board's initial rule took Post Office delays into consideration. The Board's initial general rule with respect to late-received mail ballots was set forth in NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11336.4:

Envelopes received after the close of business on the return date should be kept

separated from those timely received. The Board agent should void these ballots as "untimely" at the checkoff. However, if all parties agree to waive the deadline, such ballots will be opened and counted.

The Board relaxed this rule at least twice. In *Queen City Paving Co.*, 243 NLRB 71, 73 (1979), the Board directed that a ballot mailed 3 days before the deadline be opened and counted because "it was reasonable for [the employee] to assume that, in the normal course of the mails, his ballot would be received by the Regional Director prior to the closing date." In *Kerrville Bus Co.*, 257 NLRB 176 (1981), the Board further relaxed the rule by directing that, in addition to five ballots that had been mailed at a time when the employees could reasonably anticipate timely receipt, two additional ballots should be counted although timely receipt could not have been anticipated (one was mailed on a Sunday, the day before the due date, and the other on the due date). Citing several factors to be considered, the Board concluded that the ballots should be counted as a matter of fundamental statutory policy to afford employees the broadest possible participation in Board elections as long as the election procedures are not unduly interfered with or hampered.

The current rule, Section 11336.5(c), was revised to incorporate *Kerrville* to the extent that ballots are received after the close of business on the return date but before the ballot count. Nevertheless, the Board should adhere to the principle underlying *Queen City* and *Kerrville* and not disenfranchise employees who voted in ample time for their votes to be counted <u>but for</u> the Postal Service's or Board contractor's error.

The Report on Objections cites *Watkins Construction Co.*, 332 NLRB 828 (2000) for the proposition that *Queen City* and *Kerrville Bus* are no longer relevant under current Board law. But *Watkins* only held that ballots received late but before the count begins should be counted. *Watkins* did not hold that employees who mailed their ballots at a time they reasonably expected timely

delivery should be disenfranchised.

Here, the United States Postal Service guarantees three day delivery for priority mail. Each of the seven employees paid extra to ensure that his vote would be counted. Each of the seven received confirmation that his ballot had reached Washington, D.C. in time to be counted. Three employees called the Resident Office and flew to Washington to vote in person. Four employees relied on the Postal Service and their votes were not counted. This is not consistent with the Board's policy furthering the right to vote.

Finally, the Report on Objections cites several cases in which the court of appeals upheld the Board's refusal to count ballots. The Region relies heavily on *J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850 (5th Cir. 1978) and *Antelope valley Bus Co. v. NLRB*, 275 F.3d 1089, 1094-1096 (D.C. Cir. 2002). In *McDermott*, the court held that the NLRB did not err in refusing to set aside an election where three timely cast ballots were lost in the mail but could have affected the results of the election if counted. The court emphasized that "neither the Board, the union, nor the employer was responsible for the loss of the ballots. Here, an NLRB contractor was somehow involved. Furthermore, unlike the *McDermott*, the problem was not the "vagaries of mail deliveries." In *Antelope Valley*, the court upheld an election where a dispositive number of voters, four, did not receive ballots from the Board. But the court held that they had an adequate opportunity to vote and should have seen the Notice alerting them to the election. According to the court, the employees' failure to receive a ballot should have prompted a reaction, an attempt to get a replacement ballot. Here, the employees did everything they could to file a timely ballot.²

²See also *Synergy Gas Corp. v. NLRB*, 1993 U.S. App. LEXIS 7793 (D.C. Cir. 1993), upholding an election and refusing to count the late receipt of a few ballots which were mailed only (continued...)

The Report cites *Lemco Construction Co.*, 283 NLRB 459, 460 (1987) for the proposition that the Board will certify elections "where there is adequate notice and opportunity to vote and the parties are not prevented from voting by the conduct of a party or by unfairness in the scheduling or mechanics of the election." Here, the mechanics of the election were unfair. And to the extent that "laboratory conditions" are still a factor, third party misconduct can result in setting aside an election. Here, the third party miscreant was either the Postal Service or an NLRB contractor.

In addition, Section 11324 of the Board's Casehandling Manual requires that the polls be kept open to count the ballots of employees waiting on line when the polling was expected to close. In Section 11324.1, the Board states that employees who arrive at the polling place after the polling period has ended should be permitted to cast challenged ballots if the parties cannot agree to count their ballots. This challenged ballot procedure should also apply where, as here, employees can prove that they mailed ballots by priority mail and in more than sufficient time for the delivery to the Region for the ballot count.

The Report on Objections rejected this analogy as impractical. But where, as here, the Region was aware during the count that some ballots were at the Washington, D.C. Post Office but undelivered, the Region could have held the count open until it communicated with the Post Office to find the missing ballots.

The Board's policy is not in accord with federal policy dealing with voting in other contexts. In *Bush v. Hillsborough County Canvassing Bd.*, 123 F. Supp. 2d 1305, 1311 (N.D. Fla. 2000), the court held unconstitutional provisions of a state election law. The court reasoned that "Whether

²(...continued) one or two days before the clearly announced deadline. This case, too, is factually distinguishable.

State procedures are not conductive to providing adequate transit time, or whether ballots are mailed late despite the best efforts of everyone involved, in either case the effect--disenfranchisement--is the same."

In bankruptcy law, the concept of "excusable neglect" has been properly applied to deem late ballots timely received. See, e.g., *Hanson v. First Bank of South Dakota, N.A.*, 828 F.2d 1310, 1314 (8th Cir. 1987); *In re Land Paving Co.*, 1998 Bankr. LEXIS 2021 (Bankr. D. Neb. 1998); *In re Buick, Inc.*, 126 Bankr. 840, 849-50 (Bankr. E.D. Pa. 1991); *In re Paul*, 101 Bankr. 228 (Bankr. S.D. Cal. 1989); *In re Trail's End Lodge Inc.*, 54 Bankr. 898, 902 (Bankr. D. VT. 1985); *In re Hills Stores Co.*, 167 B.R. 348, 351-352 (Bankr. S.D. N.Y. 1994).

The Board should adapt its procedures to avoid disenfranchising significant percentages of eligible voters where they follow procedures which everyone believed would result in the timely delivery of their ballots.

EXCEPTION 2: RESPONSIBILITY FOR THE LATE DELIVERY OF BALLOTS: The Regional Director's Report on Objection does not mention that the Board has contracted with a third party to transport mail ballots from the Washington, D.C. Post Office to the Resident Office and attributes the failure of 15% of ballots cast by eligible voters to be delivered in time to be counted to the "vagaries of the US Mail."

The Employer's first Objection was certainly more specific than the Report's recitation. It references "proven errors by the Postal Service or the interface between the Board and the Postal Service." [See Report on Objections, Exhibit A, at 2 (emphasis supplied)]. But the Report on Objections simply skirted this issue entirely and did not mention the interface.

Although we had no proof, we believe that it is well known in Region 5, in its Resident Office, and in Board Headquarters that all mail sent to Board Headquarters after the September 11, 2001 tragedy and the subsequent anthrax scare in Washington, D.C. is irradiated and often damaged prior to delivery. To avoid this damage, it is our understanding that the Board contracts with a private company to pick up mail ballots from the Post Office and to deliver them to the Resident Office for counting, thereby avoiding radiation damage. There is no procedure for observing the activities of this private company.

If this is true, and the Board and Region should know, then the Report on Objections should have at least referenced a check with the Board's contractor. There was no hearing at which the Employer had subpoena power.

The Board's use of a contractor to interface with the Post Office distinguishes this case from those cited in the Report on Objections finding that voters must suffer if Postal Service errors render their ballots untimely. Although the Board has often set aside elections where third party misconduct affects election,³ the Board is especially concerned about errors attributable to Board agents⁴ and should be equally concerned about errors by its contractors.

The Regional Director does not mention that the NLRB contracts with a private company to transport ballots from the Post Office to the Region for counting. If the ballots were at the Post Office in a timely manner, the fault cannot be placed on the voters or the Post Office. Some/most of the fault can be blamed on the NLRB's contractor. Thus, the NLRB is not blameless. The only

³See, e.g., *Universal Mfg. Corp*, 156 NLRB 1459 (1966); *Richlands Textile*, 220 NLRB 83 (1975).

⁴See, e.g, *Harry Lunstead Designs*. 270 NLRB, 1163 (1984); *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967).

blameless people re the disenfranchised voters.

EXCEPTION 3: THE BALLOT OF RICHARD FORD: The Regional Director's Report on Objections erroneously and arbitrarily required the Employer to voice two challenges to the single ballot of Richard Ford. After the Employer's observer initially challenged the ballot because the envelope in which it was mailed appeared to have been opened and taped shut, the Board Agent took the ballot envelope to the Resident Officer, who (in secret and without consulting the parties) proclaimed the ballot valid and directed the Board Agent to count the ballot. The Regional Director added insult to injury when he berated the Employer's observer for not voicing a second challenge to the ballot following the Resident Office's arbitrary actions.

The Report on Objections accurately states the relevant facts [Report at 5-6]:

At the count, the Employer's observer challenged the ballot of Employee H on the basis of the integrity of the ballot. The observer claimed that the ballot appeared to have been tampered with, that is, reopened after the flap of the envelope was signed and then taped back together. The Union disagreed. ... In response to the challenge, the Board agent inspected the ballot envelope, conferred with the Resident Officer, and determined that there did not appear to be evidence of tampering. The Board agent informed the parties that she would open the ballot and count it. The Employer's observer did not insist on challenging the ballot at that point.

But the Regional Director's conclusion that the Employer's observer was required to make a <u>second</u> challenge to Ford's ballot is wrong as a matter of law. The Employer challenged the ballot. While the Resident Officer may have had authority to make a preliminary decision, he could not void the challenge which had already been made. See *Harry Lunstead Designs*, *supra*, finding misconduct by a Board agent in providing misleading information about the right to challenge a ballot. The Board explained as follows [270 NLRB at 1170 (emphasis in the original)]:

at an election the parties do look to the Board agent for guidance concerning the various procedures which the Board has devised to ensure a fair election. In giving such guidance, and depending on the particular situation at hand, the Board agent must use his or her best judgment to make certain that the parties are cognizant of what the Board requires.

If the Board requires a second challenge, the Board Agent should have informed the parties that the

initial objection was no longer sufficient.

EXCEPTION 4: THE BALLOT OF RICHARD FORD: The Regional Director's Report on Objections erroneously upheld Resident Officer's arbitrary decision to count Richard Ford's ballot despite an obvious tear in the envelop right across Mr. Ford's signature. The condition of the ballot envelop clearly raises the possibility that the ballot was altered or tampered with.

Exhibit B to the Report on Objections is a copy made in the Resident Office of the Ford ballot envelope. It clearly shows a slit through the word "Ford," a slit sufficiently big that the envelope could have been opened and the ballot altered. Because this ballot could be determinative, the election should be set aside and a new election directed. The Employer should not be required to prove actual tampering.

CONCLUSION

For the reasons stated herein, the Board should reverse the Regional Director. The Board should either count the late received ballots (those listed by the Employer and any others received late) or set aside the election and conduct a new election.

Respectfully submitted,

Jonathan G. Axelrod

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July 5, 2012

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Of Counsel Regina M. Markey Patrick B. Shaw

Hugh J. Beins, Retired

June 4, 2012

Wayne Gold, Regional Director National Labor Relations Board, Region 5 103 South Gay Street 8th Floor Baltimore, MD 21202-7500 HAND DELIVERED

Re: International Brotherhood of Teamsters

NLRB Case No. 5-RC-078154

Dear Mr. Gold:

I have hand delivered the Employer's Objections to Conduct Affecting the Results of the Election conducted in the above-captioned case. I am separately submitting the first installment of the Employer's evidence:

Attached hereto are several documents:

- 1. United States Postal Service website material on priority mail.
- 2. Affidavit of Sean O'Neill.
- 3. Affidavit of James Curbeam.
- 4. Resident Office copy of Richard Ford envelope.

We expect to show that seven employees mailed ballots by priority mail and carefully tracked their ballots to ensure that they were timely received by the Resident Office. Three employees (in bold below) flew to Washington to vote in person when they learned that the Resident Office had not received their ballots. Four were disenfranchised when they could not fly to vote in person.

- 1. Salvador Abrica USPS Tracking Number 03112550000276507354 Expected delivery by May 24, 2012, Delivered May 30, 2012 at 7:54 a.m.
- 2. **James Curbeam** USPS Tracking Number 03112550000165675805 Expected delivery by May 23, 2012, Delivered
- 3. Stephen Hanson USPS Tracking Number 70110470000267514876 Expected delivery by May 21, 2012, Delivered
- 4. **Jim Leonhardt** USPS Tracking Number 03103200000111315652 Expected delivery by May 24, 2012, Delivered May 31, 2012 at 11:49 a.m.
- 5. Sean O'Neill USPS Tracking Number 23083250000067113498 Expected delivery by May 24, 2012, Delivered May 31, 2012 at 11:49 a.m.

Wayne Gold, Regional Director June 4, 2012 Page 2

- 6. **Terry Stark** USPS Tracking Number 23082940000031327882 Expected delivery by May 24, 2012, Delivered
- 7. Walt Westfield USPS Tracking Number 03112550000069854696 Expected delivery by May 23, 2012, Delivered

We will soon submit affidavits from Abrica, Hanson, and Westfield.

Thank you for your cooperation in this matter.

Very truly yours,

Jonathan G. Axelrod

cc: Bradley Raymond, Esq.

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Learn About Expanded Access

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Priority Mail Return Service is a premier return service for businesses that receive at least 10,000 returns a year per location

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Print Return Labels

USPS®'s innovative Merchant Returns label tool gives you several ways to create shipping labels for your customers. The barcoded label includes free tracking and has space to enter an order number or RMA number for internal purposes. With flexible printing options, you

- Include a pre-printed label with the merchandise order.
 Integrate the USPS Returns™ tool so your customers can generate a return label right on your website.
- Have your company's Call Center agents create a shipping label from the Returns tool and share it with the customer via email, fax, or mail. Incorporate a link to the USPS Returns web site, so the customer can generate and print

For assistance with the USPS-hosted label generation tool or if you would like more information on returns, send an email and a Postal Representative will respond within 2 business days Email returns@usps.gov

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 5

FEDERATION OF AGENTS AND INTERNATIONAL REPRESENTATIVES,

Petitioner,

NLRB Case No. 05-RC-078154

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Employer.

AFFIDAVIT OF JAMES CURBEAM.

- I. James Curbeam, being duly sworn, depose and state as follows:
- 1. I am employed by the International Brotherhood of Teamsters as an Organizer. I am in the bargaining unit in which the NLRB conducted a representation election in Board Case No. 05-RC-078154.
 - 2. I received a ballot package from the NLRB on or about May 19, 2012.
- 3. On May 21, I filled out my ballot following the instructions in ballot package. I went to the Post Office in Nashville, Tennessee, and mailed the ballot priority mail with a tracking number of 03112550000165675805.
- 4. After I mailed the ballot, I used the Internet to check my tracking number and learned that the ballot had arrived in Washington, DC and that delivery was expected on May 23.

5. After checking again on May 25, I saw that the ballot was still in the Washington DC sort center. I contacted the NLRB and spoke with Maria Guerrero to confirm the status of my ballot. She said that the NLRB Resident Office had not received my ballot.

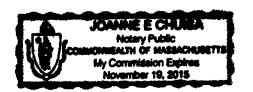
6. I continued to track my ballot over the weekend. On Monday, May 28, I learned that the ballot was still in the Washington, D.C. sort center. On May 29, I called the NLRB at about 10:15 a.m. and learned that my ballot was still not at the NLRB Resident Office. About 11:45 a.m., I went to the Resident Office and voted in person.

7. Attached hereto is a copy of my tracking form from the Post Office.

8. I have been given assurances that (a) the purpose of the taking of this affidavit was communicated (the IBT is investigating what happened to the ballot I mailed to the NLRB and whether the NLRB or the US Postal Service interfered with the right of certain employees to vote); (b) the IBT will make no reprisal against me for for what I say or do not say; (c) that my participation in the conversation leading to this affidavit is voluntary; (d) the questioning leading to the preparation of this affidavit occurred in an atmosphere free from animus; (e) the questions are not itself coercive; (f) the questions are relevant to the potential election objective; (g) the questions do not probe my subjective state of mind; and (h) the questions do not otherwise interfere with my statutory rights or the rights of my co-workers.

I have read this two page affidavit and swear that it is true and correct.

James Curbeam	



Jane Chipa

English

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May 22, 2012

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Processed at USPS Origin Sort Facility Acceptance

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 5

FEDERATION OF AGENTS AND INTERNATIONAL REPRESENTATIVES.

Petitioner,

NLRB Case No. 05-RC-078154

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Employer.

AFFIDAVIT OF SEAN O'NEILL

- I, Sean O'Neill, being duly sworn, depose and state as follows:
- 1. I am employed by the International Brotherhood of Teamsters as an Organizer. I am in the bargaining unit in which the NLRB conducted a representation election in Board Case No. 05-RC-078154.
- 2. My wife received a ballot package from the NLRB on or about May 19. She forwarded it to me and I received it on May 21. I voted and mailed by ballot at the Post Office in Lancaster, PA by signature confirmed priority mail.
- 3. I tracked my ballot on the Post Office website using tracking number 2308325000067113498. I checked on May 24 and found that my ballot had arrived in Washington and that delivery was expected on May 24. I rechecked on May 28 and the website still said that delivery was May 24.

4. On May 29, I checked again and the website still said delivery was expected on May 24. I would have driven to Washington to vote in person, but there was an unexpected death in my family and I could not.

5. Attached is a true and correct copy of my Postal Service tracking information.

6. I have been given assurances that (a) the purpose of the taking of this affidavit was communicated (the IBT is investigating what happened to the ballot I mailed to the NLRB and whether the NLRB or the US Postal Service interfered with the right of certain employees to vote); (b) the IBT will make no reprisal against me for for what I say or do not say; (c) that my participation in the conversation leading to this affidavit is voluntary; (d) the questioning leading to the preparation of this affidavit occurred in an atmosphere free from animus; (e) the questions are not itself coercive; (f) the questions are relevant to the potential election objective; (g) the questions do not probe my subjective state of mind; and (h) the questions do not otherwise interfere with my statutory rights or the rights of my co-workers.

I have read this two page affidavit and swear that it is true and correct.

Sean O'Neill

Swarn and subscribed before me this

6/1/12

COMMONWEALTH OF PENNSYLVANIA

NOTABIAL SEAL TRINA M. ALBERT, Notary Public City of Lancuster, Lancaster County My Commission Expires Dec. 2, 2014



Date: 05/31/2012

SEAN ONEILL:

The following is in response to your 05/29/2012 request for delivery information on your Signature Confirmation(TM) item number 2308 3250 0000 6711 3498. The delivery record shows that this item was delivered on 05/31/2012 at 11:49 AM in WASHINGTON, DC 20570 to P GREEN. The scanned image of the recipient information is provided below.

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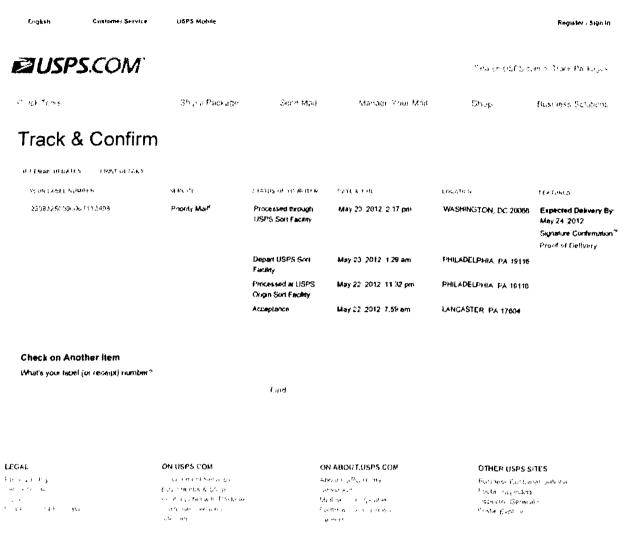
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I BELIEVE I AM AN ELIGIBLE VOTER.
I PERSONALLY VOTED THE WITHIN BALLOT.

CASE NUMBER

5-RC-78154

ELIGIBILITY KEY NUMBER 7

M MM 22 1

Beins, Axelrod, P.C.

1625 Massachusetts Avenue, N.W., Suite 500 Washington, D.C. 20036-2001 · www.beinsaxelrod.com ph: 202.328.7222 · fax: 202.328.7030

B = 2¹⁰⁰ } 453

Jonathan G. Axelrod H. David Kelly, Jr. Justin P Keating

Of Counsel Regina M. Markey Patrick B. Shaw

June 8, 2012

Wayne Gold, Regional Director National Labor Relations Board, Region 5 100 S. Charles Street Suite 600 Baltimore, MD 21201

HAND DELIVERED

Re:

International Brotherhood of Teamsters

NLRB Case No. 5-RC-078154

Dear Mr. Gold:

In addition to the documents I delivered on June 4, I enclose the following:

- 1. Affidavit of Stephen Hanson.
- 2. Affidavit of Walt Westfield
- 3. Affidavit of Sean O'Neill (original; previous version was a pdf).
- 4. Statements obtained by the Employer and priority mail tracking material for all seven employees who sent ballots by priority mail that were not counted on May 29.

Thank you for your cooperation in this matter.

Very truly yours,

Jonathan G. Axelrod

cc: Bradley Raymond, Esq.

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 5

FEDERATION OF AGENTS AND INTERNATIONAL REPRESENTATIVES,

Petitioner,

NLRB Case No. 05-RC-078154

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Employer.

AFFIDAVIT OF STEPHEN HANSON

- I, Stephen Hanson, being duly sworn, depose and state as follows:
- 1. I am employed by the International Brotherhood of Teamsters as an Organizer. I am in the bargaining unit in which the NLRB conducted a representation election in Board Case No. 05-RC-078154.
- 2. I received a ballot in the mail on May 17. I opened the ballot, filled out the ballot, and went to the Post Office in Little Rock, Arkansas. I mailed the ballot back and asked that the envelope be sent certified mail with tracking.
- 3. Itook my tracking notice and saw that the ballot was delivered to Washington on May 20 and that delivery was scheduled for May 21. I checked again on May 29 and found that my ballot was still in Washington, DC, but undelivered. I went back to the Post Office. An agent checked and said that the ballot was still in the sorting center scheduled fort delivery.

Attached is a true and correct copy of my Postal Service tracking information. 4.

I have been given assurances that (a) the purpose of the taking of this affidavit was 5. communicated (the IBT is investigating what happened to the ballot I mailed to the NLRB and whether the NLRB or the US Postal Service interfered with the right of certain employees to vote); (b) the IBT will make no reprisal against me for for what I say or do not say; (c) that my participation in the conversation leading to this affidavit is voluntary; (d) the questioning leading to the preparation of this affidavit occurred in an atmosphere free from animus; (e) the questions are not itself coercive; (f) the questions are relevant to the potential election objective; (g) the questions do not probe my subjective state of mind; and (h) the questions do not otherwise interfere with my statutory rights or the rights of my co-workers.

I have read this two page affidavit and swear that it is true and correct.

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DATE & TIME

LOCATION

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70110470000267514876

Priority Mail®

Processed at USPS

May 20, 2012, 4:17 am

WASHINGTON, DC 20066 Expected Delivery By:

Origin Sort Facility

May 21, 2012 Certified Mail™

Dispatched to Sort Feafity

Acceptance

May 18, 2012, 4:20 pm May 18, 2012, 9:11 am

LITTLE ROCK, AR 72209

LITTLE ROCK, AR 72209

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 5

FEDERATION OF AGENTS AND INTERNATIONAL REPRESENTATIVES,

Petitioner,

NLRB Case No. 05-RC-078154

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Employer.

AFFIDAVIT OF WALT WESTFIELD

- I, Walt Westfield, being duly swom, depose and state as follows:
- I am employed by the International Brotherhood of Teamsters as an Organizer. I am
 in the bargaining unit in which the NLRB conducted a representation election in Board Case No. 05RC-078154.
- 2. I received a mail ballot on or about May 17. On May 21, I went to the Post Office in Cleveland, Tennessee, and expressed mailed the ballot back with a delivery confirmation receipt.

 I got a tracking number from the Post Office.
- 3. On May 29, I was told the vote count and that my ballot had not been received. I tracked my delivery number and learned that my ballot had arrived in Washington, D.C., at 2:06 a.m. on May 23. I have not checked to see what happened to my ballot.
 - 4. Attached is a true and correct copy of my Postal Service tracking information.

5. I have been given assurances that (a) the purpose of the taking of this affidavit was communicated (the IBT is investigating what happened to the ballot I mailed to the NLRB and whether the NLRB or the US Postal Service interfered with the right of certain employees to vote); (b) the IBT will make no reprisal against me for what I say or do not say; (c) that my participation in the conversation leading to this affidavit is voluntary; (d) the questioning leading to the preparation of this affidavit occurred in an atmosphere free from animus; (e) the questions are not itself coercive; (f) the questions are relevant to the potential election objective; (g) the questions do not probe my subjective state of mind; and (h) the questions do not otherwise interfere with my statutory rights or the rights of my co-workers.

I have read this two page affidavit and swear that it is true and correct

Walt Westfield

My Commission Expires Aug. 26, 2019

6/7/12

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 5

FEDERATION OF AGENTS AND INTERNATIONAL REPRESENTATIVES,

Petitioner,

NLRB Case No. 05-RC-078154

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Employer.

AFFIDAVIT OF SEAN O'NEILL

- I, Sean O'Neill, being duly sworn, depose and state as follows:
- 1. I am employed by the International Brotherhood of Teamsters as an Organizer. I am in the bargaining unit in which the NLRB conducted a representation election in Board Case No. 05-RC-078154.
- 2. My wife received a ballot package from the NLRB on or about May 19. She forwarded it to me and I received it on May 21. I voted and mailed by ballot at the Post Office in Lancaster, PA by signature confirmed priority mail.
- 3. I tracked my ballot on the Post Office website using tracking number 2308325000067113498. I checked on May 24 and found that my ballot had arrived in Washington and that delivery was expected on May 24. I rechecked on May 28 and the website still said that delivery was May 24.

4. On May 29, I checked again and the website still said delivery was expected on May 24. I would have driven to Washington to vote in person, but there was an unexpected death in my family and I could not.

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I have read this two page affidavit and swear that it is true and correct.

Sean O'Neill

Serom and subscribed before me this

COMMONWEALTH OF PENNSYLVANIA

6/1/12

NOTARIAL SEAL TRINA M. ALBERT, Notary Public City of Lancaster, Lancaster County My Commission Expires Dec. 2, 2014



Date: 05/31/2012

SEAN ONEILL:

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Signature of Recipient:

Address of Recipient:

11LRB 20570

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On May 29, 2012, an election (05-RC-78154) was conducted among certain employees of the Employer, International Brotherhood of Teamsters Union of Washington, D.C, ("IBT"). A tally of ballots established that 18 votes were cast for the Petitioner, Federation of Agents & International Representatives ("Union"), and 16 votes cast for "No Union." There was 1 challenged ballot.

The Employer, International Brotherhood of Teamsters Union of Washington, D.C, ("IBT") has been made aware that multiple employees mailed there ballots with tracking conformation through USPS to the NLRB on or before May, 18 2012. A list of the employees are listed below with their USPS tracking info, also you will find statements form them along with the tracking log. It is asked that the NLRB count all ballots that were in the DC postal system before May 29, 2012. For the record James Curbeam, Jim Leonhard t and Terry Stark casted there ballots in person on May, 29 2012 after they confirmed their ballots were not at the NLRB.

- 1. Salvador Arica USPS Tracking # 03112550000276507354 Expected delivery by May 24, 2012, Delivered May 30, 2012 at 7:54 am
- 2. James Curbeam USPS Tracking #03112550000165675805 Expected delivery by May 23, 2012, Delivered
- 3. Stephen Hanson USPS Tracking #70110470000267514876 Expected delivery by May 21, 2012, Delivered
- 4. Jim Leonhardt USPS Tracking # 03103200000111315652 Expected delivery by May 24, 2012, Delivered May 31, 2012 at 11:49 am
- 5. Sean O'Neill USPS Tracking # 23083250000067113498 Expected delivery by May 24, 2012, Delivered May 31, 2012 at 11:49 am
- 6. Terry Stark USPS Tracking # 23082940000031327882 Expected delivery by May 24, 2012, Delivered
- 7. Walt Westfield USPS Tracking # 03112550000069854696 Expected delivery by May 23, 2012, Delivered

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DATE & TIME

May 30, 2012, 7:54 am

May 24, 2012, 1:32 am

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May 24, 2012

Delivery Confirmation "

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May 23, 2012

WASHINGTON, DC 20066

ALBUQUERQUE, NM 87101

Processed at USPS Origin Sort Facility

May 22, 2012, 9:09 pm

ALBUQUERQUE, NM 87101

Acceptance

May 22, 2012, 10:50 am

ALBUQUERQUE, NM 87114

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NLRB Election

From: Stephen Hanson (stephenh02@comcast.net)

Sent: Thu 5/31/12 11:48 PM
To: jcurbeam@hotmail.com

To whom it may concern:

I Stephen Hanson received my ballot on May 17, 2012. I marked my ballot, sealed, and mailed using the address provided by the NLRB. To ensure that my ballot would make it to the NLRB even with the timely mailing by myself I used Certified Mail Tracking # 7011-0470-0002-6751-4876 on which my ballot made it to the Washington D.C. sort facility on the May 20, 2012 with a delivery date of May 21, 2012.

I Stephen Hanson do not know why this ballot was not received in the offices of the NLRB by May 29, 2012. I have also gone to check with my local Post Office in Little Rock, AR and all is being told to me is that the envelope is in the Washington, D.C. sort facility.

I Stephen Hanson also would respectfully request that my ballot be counted in such an important election.

Fraternally,

Stephen Hanson IBT Organizer

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70110470000267	7514876	Priority Maii [®]	Processed at USPS Origin Sort Facility	May 20, 2012, 4:17 am	WASHINGTON, DC 20066	Expected Delivery By: May 21, 2012 Certified Mail
			Dispatched to Sort Facility	May 18, 2012, 4:20 pm	LITTLE ROCK, AR 72209	
			Acceptance	May 18, 2012, 9:11 am	LITTLE ROCK, AR 72209	
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NIrb Election

From: jimi710@aol.com

Sent: Thu 5/31/12 7:50 PM

To: jcurbeam@hotmail.com

To whom it may concern,

I participated in the NLRB election with the IBT and FAIR on May 29,2012. I mailed my ballot from home on May 23,2012 USPS Priority mail tracking # 03103200000111315652.

The ballot Showed being in Washington, D.C. on May 24,2012. Tracking showed it being delivered today May 31,2012. I spoke to the Board agent on Friday May 25,2012 and she had not had my ballot as of 4nm FST.

I secured travel for May 29 to D.C. so I could vote in person. I feel I did what was asked in the instructions, and my original ballot should have been counted. I believe that since my work schedule got me home on May 23 my best avenue to secure prompt delivery was to use Priority mail which the Post Office told me would be delivered on Friday May 25th.

I am requesting that this matter be looked into.

Thank you,

Jim Leonhardt

IBT Organizer

202-528-3776

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Result 1	2308325000006711 3498 <u>I</u>	rity	Processed through USPS Sort Facility	May 23, 2012, 2:17 pm	WASH INGT ON, DC 20066	Expected Delivery By: May 24, 2012 Signature Confirmation The Confirmation of the Co
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			Processed at USPS Origin Sort Facility	May 22, 2012, 11:32 pm	PHILA DELP HIA, PA 19116	
			Acceptanc e	May 22, 2012, 7:59 am	LANC ASTE R, PA 17604	

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Election

From: Terry Stark (teamstark222@yahoo.com)

Sent: Wed 5/30/12 6:22 PM

To: James Curbeam (jcurbeam@hotmail.com)

To Whom It May Concern:

Regarding NLRB election International Brotherhood of Teamsters Organizers, petitioner FAIR. I marked my ballot and mailed it to address provided by NLRB on May 21, 2012. To ensure timely and secure delivery I sent my ballot via USPS Priority mail, tracking number 2308 2940 0000 3132 7882. May 23, 2012 at 12:15 am document was processed at USPS sort facility Washington, DC. Also shown at that time expected delivery by May 23, 2012. On May 25th, with no change in the tracking data, I went to the Cabot, Arkansas post office, the origin of the letter, and could not get a definite answer that my letter would be delivered by May 29. They researched it and told me that after speaking to employees in Washington, DC that the letter was in the hands of a contractor for a decontamination process, a procedure used on mail going into a federal building.

With no assurances that my ballot would arrive in a timely manner I made arrangements to fly to Washington DC to cast my ballot in person and did so at the NLRB office on May 29, 2012.

On May 30, 2012, with the USPS tracking data showing the same status as the previous seven days, I went back to the Cabot, Arkansas post office and requested in writing where this letter is and why it has never been delivered.

Point being, in this important election, I followed the guidelines of the NLRB, returned the ballot in a timely manner and had I not taken the time to fly to Washington my vote would not have been counted.

Terry Stark IBT Organizer

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Attention: National Labor Relation Board,

I Walt Westfield work for the International Brotherhood of Teamsters, as a staff Organizer with the Organizing Department.

I Walt Westfield received my ballot May 17, 2012. On May 21, 2012 I used the U.S. Postal Service Priority mail with "Delivery Confirmation Receipt."

The tracking number is: 0311 2550 0000 6985 4696. Through the tracking number it was received at the USPS Sort Facility in Washington, DC on May 23, 2012 at 2:o6 am.

I Walt Westfield do not know why as of the May 29.2012 my ballot was not in your Office. I Walt Westfield would like for my ballot to be counted.

Respectfully Submitted May 30. 2012

Walt Westfield, Organizer 202-437-5723 International Brotherhood of Teamsters Organizing Department

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			Processed through USPS Sort Facility	May 21, 2012, 11:56 pm	CHATTANOOGA, TN 37421	zowery communicati	
			Depart USPS Sort Facility	May 21, 2012	CHATTANOOGA, TN 37421		
			Processed at USPS Origin Sort Facility	May 21, 2012, 8 ⁻ 13 pm	CHATTANOOGA, TN 37421		
			Dispatched to Sort Facility	May 21, 2012, 4:38 pm	CLEVELAND, TN 37311		
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Exceptions, Memorandum, and supporting information was mailed, first class, postage prepaid, this 29th date of June, 2012 to

John W. Heise P.O. Box 760 Roseville, CA 95661-0760

Wayne Gold, Regional Director National Labor Relations Board Region 5 100 South Charles Street Suite 600 Baltimore, MD 21201

Jonathan G. Axelrod

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